

HR Weekly Podcast
06-24-2015

Today is June 24, 2015, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic concerns the United States Department of Labor's, or DOL, proposed changes to the overtime regulations.

On March 13, 2014, President Barack Obama issued a presidential memorandum directing Secretary of Labor Thomas Perez to begin the process of reviewing overtime pay protections to increase the number of workers who are eligible for overtime. In May 2014, the DOL announced that it was directing the secretary to "modernize and streamline the existing overtime regulations for executive, administrative, and professional employees."

The DOL's proposed changes to the regulations would increase the number of employees who qualify for overtime in several ways. It is very likely that the agency will increase the threshold required for an exemption or even double it. The current salary threshold for white-collar exemptions is \$455 per week. If the threshold increases, more employees will be eligible for overtime. Additionally, the DOL may change the duties test to be more difficult to satisfy. The overtime regulations require employees to do certain duties to be classified as exempt. An exempt administrative, executive, professional, computer, or outside sales employee must have as his primary duty work that meets the first requirement of the standard duties test for the exemption. Whether an employee meets the primary duties test currently is determined based on all the facts in a particular case. The amount of time spent performing the required duty is a key factor. Finally, the DOL may impose a hard-and-fast minimum 50% time requirement on exempt primary duties. Currently, "primary duties" is defined as a responsibility that occupies more than 50% of an employee's time. Time alone currently is not the only test. An employee who does not spend more than 50% of his time on his managerial duties might still have management as his primary duties if other factors are present. These factors include:

- The relative importance of the executive duties as compared to other types of duties,
- The amount of time spent performing exempt work,
- The employee's relative freedom from supervision, and
- Whether the employee's salary is greater than the wages paid to other workers for the kind of non-exempt work performed by the employee.

If a hard-and-fast minimum 50% time requirement is imposed on exempt primary duties, the previous factors listed will no longer play into the analysis.

The DOL's proposed changes were submitted to the federal Office of Management and Budget, or OMB, for review on May 5, 2015. The review process can take 30-60 days and in some cases even longer. The proposed new regulations would increase the number of employees nationwide who are eligible for overtime if the regulations become finalized. Employers and HR professionals should follow the review of the FLSA regulations by the OMB and be prepared to read and understand the new regulations if they become final. Thank you.